

BYTHEL J. COMPTON

IBLA 74-328

Decided December 13, 1974

Appeal from decision of Alaska State Office, Bureau of Land Management, rejecting in part an application to purchase a trade and manufacturing site (A-063778).

Set aside in part and remanded.

1. Alaska: Trade and Manufacturing Sites

There is no authority to extend the time for improving and developing a trade and manufacturing site beyond the five-year statutory life of the claim.

2. Administrative Practice -- Administrative Procedure: Adjudication -- Alaska: Trade and Manufacturing Sites

A report of field examination is not to be used as evidence, without a hearing, for the rejection in whole or in part of a trade and manufacturing site purchase application. Such report is a proper basis for initiating a contest proceeding giving notice of the reasons for rejection and notice of the right of an applicant to a hearing in the event he disputes the facts.

3. Alaska: Trade and Manufacturing Sites -- Hearings

Where on appeal from a rejection in whole or in part of a trade and manufacturing site purchase application appellant alleges use and improvements on a portion of the rejected area which disputes the factual bases

for rejection, the case will be remanded for the initiation of contest proceedings to obtain evidence upon which to determine whether the requirements have been met, and the extent of qualifying acreage, if any.

APPEARANCES: Bythel J. Compton, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Bythel J. Compton appeals from that portion of a decision of the Alaska State Office, Bureau of Land Management (BLM), dated May 6, 1974, which rejected 60 acres of the approximately 80 acres described in his application to purchase a trade and manufacturing site filed pursuant to the Act of May 14, 1898, as amended, 43 U.S.C. § 687a (1970). This acreage was rejected for the stated reason that a field examination discloses that the 60 acres were unoccupied and unused for the purpose of trade, manufacture or other productive industry as required by the Act. The decision approved the application as to the approximately 20 acres of the tract fronting on Lake Susitna.

The site applied for is now surveyed and is identified as Lot 1 of U.S. Survey 5649, Alaska. It is situated on the west shore of Lake Susitna, and lies approximately in, what would be if surveyed under the rectangular system, secs. 15 and 16, T. 7 N., R. & W., Copper River Meridian.

Compton filed his notice of location of settlement of his trade and manufacturing site claim on October 13, 1965, stating that occupancy was made on September 27, 1965. In his application to purchase and sketch map filed on October 12, 1970, he listed the following improvements, which he valued at \$35,688: dining and kitchen building, six cabins, generator shed, storage building, docks, and a recreation building under construction. He stated that approximately 80 acres are covered by these improvements and that the business operated on this land is the Lake Susitna Wilderness Camp, which is a summer camp for boys with emphasis on "wilderness" activities. He added that winter cabin rental is a secondary part of the business.

The Bureau of Land Management on October 29, 1970, requested a field examination of the site. A report of the examination made on August 15, 1972, was prepared and submitted in February 1974. The report states with regard to the improvements on the site:

Examiner found the following improvements: (1) 20' x 40' lodge, frame construction, (2) 12 x 16 frame cabins, three in number, (3) 8 x 12 frame cabin, (4) 10 x 12 frame cabin, (5)

10 x 12 aluminum shed near the dock, (6) 6 x 8 frame generator shed, (7) a pile of lumber, and (8) a dock.

The examiner's report further found that approximately 20 acres of the site are occupied by the improvements; that the inland 60 acres are not used and occupied. It recommended that the portion of the site which has actually been occupied and utilized in the appellant's business be processed to patent and the claim be canceled as to the remainder of the acreage. The report describes by metes and bounds the unoccupied and unused portion of the site designated as Tract 1 and recommended that it be deleted from the claim. It also describes a Tract 2, the portion of the site recommended for patent.

BLM adopted the findings and recommendations in the report and, as stated above, approved for patent approximately 20 acres and rejected the proposed purchase of the 60 acres in Tract 1. As to the rejected 60 acres, the decision pointed out that the requirements of regulation 43 CFR 2562.3(d)(1) have not been met. It provides that the land comprising a trade and manufacturing site be:

* * * actually used and occupied for the purpose of trade, manufacture or other productive industry * * * and that it embrace the applicant's improvements and is needed in the prosecution of the enterprise. A site for a prospective business cannot be acquired under section 10 of the act of May 14, 1898 (30 Stat. 413; 48 U.S.C. 461). 1/

On June 7, 1974, Bythel J. Compton filed his notice of appeal together with his statement of reasons for his appeal. The latter is addressed to the rejection of the "inland sixty acres." Appellant states that: (1) to clear and erect structures destroys the wilderness character of the land which is essential to the camp's program; (2) although 20 acres of land is adequate for the physical buildings and permanent structures at present, to limit the site to a maximum of 20 acres would mean the camp would be nothing more than a resort type business; (3) one will constantly find a variety of shelters that have been built by campers, with cooking fires and other camper constructed apparatus during training, instruction and practice sessions; (4) areas have been designated for archery and rifle instruction; (5) there are several trails for snowshoeing and snowmobile riding; (6) there is a 10' x 12' cabin in the "back section" used for storage of camping equipment, supplies, and tools; and (7) he has not been in a position to build all the facilities at once because of time and money. In conclusion he admits and contends:

I do not honestly feel I can justify the entire eighty acres of my original filing at this time. However, to be limited to twenty acres would make

1/ Now codified under 43 U.S.C. § 687a (1970).

much that I have been working toward for years completely meaningless and would spell the end of a meaningful "Lake Susitna Wilderness Camp."

Purchase of a trade and manufacturing site is permissible under the requirements of section 10 of the Act of May 14, 1898, supra, which provides:

Any citizen * * * in the possession of and occupying public land in * * * Alaska in good faith for the purpose of trade, manufacture or other productive industry may each purchase one claim * * * upon submission of proof that said area embraces improvements of the claimant and is needed in the prosecution of such trade, manufacture, or other productive industry * * *.

[1] Section 5 of the Act of April 29, 1950, 43 U.S.C. § 687a-1 (1970), formerly set forth at 48 U.S.C. § 461a (1958), requires claimants to file a notice of occupancy within 90 days from the initiation of the claim in order to be given credit for the occupancy maintained in the claim prior to the filing of the notice or an application to purchase, whichever is earlier. It also provides:

Application to purchase claims, along with the required proof or showing must be filed within five years after the filing of the notice of claim * * *.

An identical provision is contained in 43 CFR 2562.3(c). Accordingly, there is no authority to extend the time for improving and developing a trade and manufacturing site beyond the five-year statutory life of the claim. Thus any improvements constructed on the site thereafter may not be considered in determining whether the requirements of the statute have been met. Don E. Jonz, 5 IBLA 204 (1972).

[2] A purchase application for a trade and manufacturing site should not be rejected in whole or in part by a Bureau of Land Management decision in reliance only on a report of field examination of the site. A report of field examination is a proper basis for initiating a contest proceeding giving notice of the reasons for rejection of the application in whole or in part and the right of the applicant to a hearing if he disputes the facts upon which the charges of insufficient compliance with the law are based. Martha J. Jillson, 6 IBLA 150 (1972).

[3] As mentioned above, attached to the application to purchase is a sketch map and also a separate legend designated "Explanation of Map." The map shows some improvements in the rejected area. Whether those improvements were in existence or merely prospective

is unknown. The Bureau report makes no reference to any improvements in that area. Although prospective use of the land is not qualifying under the Act, appellant on appeal has alleged use and improvements on a portion of the rejected area (the so-called "inland sixty acres"), which disputes in part the factual bases for rejection. We believe this is sufficient to warrant the initiation of a contest before there can be a determination of whether or not the requirements of the law have been met, and, if so, a further determination of the extent of the acreage within the "inland sixty acres" on which the requirements on the date of expiration of the five-year statutory life of the claim have been met. Lance H. Minnis, 6 IBLA 94 (1972).

At the hearing, appellant will have the burden of presenting the evidence necessary to establish that he has met the trade and manufacturing site requirements for the purchase of the "inland sixty acres" or of any part thereof. Failure of appellant to meet his burden as to any portion of the sixty acres will result in the rejection of his application to that extent. Don E. Jonz, *supra*; David A. Burns, 6 IBLA 171 (1972).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, that portion of the decision appealed from is set aside and the case is remanded to the Alaska State Office for further proceedings consistent with this opinion.

Anne Poindexter Lewis
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Joan B. Thompson
Administrative Judge

